

CCRB INVESTIGATIVE RECOMMENDATION

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|---|--|--|--|------------------------------------|--|
| Investigator: Maura Roche | Team: Squad #4 | CCRB Case #: 201608806 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Saturday, 10/08/2016 7:00 PM | Location of Incident: § 87(2)(b) [REDACTED] | Precinct: 81 | 18 Mo. SOL 4/8/2018 | EO SOL 4/8/2018 | |
| Date/Time CV Reported Wed, 10/19/2016 12:53 PM | CV Reported At: CCRB | How CV Reported: Call Processing System | Date/Time Received at CCRB Wed, 10/19/2016 12:53 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| [REDACTED] | [REDACTED] | [REDACTED] |

| Witness(es) | Home Address |
|-------------|--------------|
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |

| Subject Officer(s) | Shield | TaxID | Command |
|----------------------------|--------|--------|---------|
| 1. DT2 Nelson Figueroa | 07202 | 901544 | 067 DET |
| 2. DT2 Michael Braithwaite | 00347 | 880686 | 067 DET |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------------------|---|-----------------------------|
| A.DT2 Nelson Figueroa | Abuse: Detective Nelson Figueroa stopped § 87(2)(b) [REDACTED] | [REDACTED] |
| B.DT2 Nelson Figueroa | Abuse: Detective Nelson Figueroa detained § 87(2)(b) [REDACTED] | [REDACTED] |
| C.DT2 Nelson Figueroa | Abuse: Detective Nelson Figueroa searched the vehicle in which § 87(2)(b) [REDACTED] was an occupant. | [REDACTED] |
| D.DT2 Nelson Figueroa | Abuse: Detective Nelson Figueroa searched § 87(2)(b) [REDACTED]'s purse. | [REDACTED] |
| § 87(2)(g), § 87(4-b) [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |

Case Summary

On October 19, 2016, § 87(2)(b) filed this complaint with the CCRB via the call processing system (BR 01).

On October 8, 2016, at approximately 7 p.m., § 87(2)(b) and her daughter, § 87(2)(b) who is § 87(2)(b) years old, were sitting in § 87(2)(b)'s car on the § 87(2)(b) in Brooklyn, when an unmarked car pulled up next to them, blocking § 87(2)(b) in her parking spot (**Allegation A**). An officer, identified by the investigation as Det. Nelson Figueroa, approached § 87(2)(b)'s car and attempted to open the front driver's side door by pulling on the door handle. Det. Figueroa showed § 87(2)(b) his shield, and § 87(2)(b) unlocked the door, at which point Det. Figueroa opened the door. Det. Figueroa then allegedly reached into the car, took hold of § 87(2)(b)'s right wrist and grabbed her bag, which was on the front passenger seat. Det. Figueroa then pulled § 87(2)(b) out of the driver's seat and pushed her up against the unmarked car, which resulted in bruises to her shins and knees (**subsumed under Allegation A**). Det. Figueroa then sat § 87(2)(b) in the back of the unmarked car (**Allegation B**).

Det. Figueroa returned to § 87(2)(b)'s car and looked under the front and back seats and inside the center console (**Allegation C**) before removing § 87(2)(b) and placing her in the back seat of the unmarked car with § 87(2)(b). Det. Figueroa then took § 87(2)(b)'s purse, turned it upside down, and shook out the contents onto the front passenger seat of the unmarked car (**Allegation D**). As he was doing this, § 87(2)(b) saw her cell phone fall out of the purse, causing a crack to the back outer casing (**subsumed under Allegation D**). Det. Figueroa then put § 87(2)(b)'s belongings back into her purse and gave the purse to § 87(2)(b)'s cousin, § 87(2)(b) who lives with § 87(2)(b) and had arrived to the scene as Det. Figueroa was searching § 87(2)(b)'s purse.

Det. Figueroa and his partner, identified by the investigation as Det. Michael Braithwaite, then drove § 87(2)(b) and § 87(2)(b) to the 67 Precinct stationhouse, where she was informed that § 87(2)(b)'s paternal grandmother, § 87(2)(b) had reported that § 87(2)(b) was missing. § 87(2)(b) was kept at the precinct stationhouse until approximately 11 p.m., when she was released without having been arrested or issued any summonses. § 87(2)(b) was released to § 87(2)(b).

§ 87(2)(g), § 87(4-b)

No video was available for this incident.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined the option of mediation § 87(2)(b).
- As of December 19, 2016, no Notice of Claim has been filed with the Comptroller (BR 02).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (BR 04).
- Det. Figueroa has been a member of the NYPD for 24 years. There are two prior allegations against him stemming from two complaints, neither of which was substantiated. § 87(2)(g)
- Det. Braithwaite has been a member of the NYPD for 33 years. There are 11 prior allegations against him stemming from six complaints, two of which were substantiated. § 87(2)(g)
 - In CCRB case #8500001, an allegation of discourtesy and an allegation of abuse of authority were substantiated. The Board recommended command discipline for each allegation. The NYPD disposition is not listed in CTS.

Potential Issues

- § 87(2)(b) is the sole establishment at the intersection of § 87(2)(b) in Brooklyn. § 87(2)(b) was contacted on October 24, 2016, and the undersigned was informed that they do not maintain cameras at that location.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) identified Det. Figueroa by name as the subject officer who stopped and searched her vehicle, searched her purse, and detained her.

§ 87(2)(b) also identified Det. Braithwaite by name and stated that he never exited his car during the initial incident and that she had brief contact with him at the precinct stationhouse.

Det. Figueroa stated in his in-person interview that he had taken the original complaint filed against § 87(2)(b) by § 87(2)(b) and that he was the lead detective on the case. Det. Braithwaite also stated in his in-person interview that his partner, Det. Figueroa, was working on a kidnapping case and that Det. Figueroa was in charge of the investigation. DD5s obtained by the investigation confirm that Det. Figueroa was the lead detective on the case (BR 15). § 87(2)(g)

Allegations not pleaded

- **Force** – § 87(2)(b) alleged that Det. Figueroa pushed her up against his car and caused bruising to her knees and shins. § 87(2)(g)
- **Abuse of Authority** – § 87(2)(b) alleged that Det. Figueroa broke her phone when he emptied out the contents of her purse. § 87(2)(b) did not say that Det. Figueroa was acting maliciously when her phone was broken, and affirmed that it occurred while Det. Figueroa was searching her purse. § 87(2)(b) also provided varying statements about whether or not she actually saw Det. Figueroa damage the phone, or only noticed the

damage later and assumed it was caused by Det. Figueroa. § 87(2)(g)

- § 87(2)(g)

Allegation A – Abuse of Authority: Detective Nelson Figueroa stopped § 87(2)(b)

Allegation B – Abuse of Authority: Detective Nelson Figueroa detained § 87(2)(b)

It is undisputed that Det. Figueroa stopped § 87(2)(b) on October 8, 2016, at approximately 7 p.m. and that she was not released from police custody until approximately 11 p.m. that same day. § 87(2)(g)

On October 20, 2016 and October 17, 2016, § 87(2)(b) provided phone statements (BR 07 and BR 12). On October 24, 2016, § 87(2)(b) was interviewed at the CCRB (BR 08). § 87(2)(g)

§ 87(2)(b) exited her apartment at § 87(2)(b) with her daughter, § 87(2)(b) who is § 87(2)(b) and entered her white Nissan SUV, which was parked on the § 87(2)(b). § 87(2)(b) placed § 87(2)(b) in a car seat in the back driver's side of the car, sat in the front driver's seat, turned the car on, locked the doors, and began to look for her phone in her purse, which was on the front passenger side seat. As she was looking for her phone, a black or gray unmarked four door sedan pulled up next to her car at a slight angle towards the sidewalk, preventing § 87(2)(b) from exiting her parking space.

Det. Figueroa exited from the front passenger side of the unmarked car and started pulling on the front driver's side door handle of § 87(2)(b)'s car. Det. Figueroa did not identify himself or say anything to § 87(2)(b) before he tried to open her car door. § 87(2)(b) told Det. Figueroa to go away because she did not know who he was or what he wanted. Det. Figueroa told § 87(2)(b) to turn off her car and open the door, and further stated that he had previously spoken with § 87(2)(b) on the phone earlier that day. § 87(2)(b) replied to Det. Figueroa that she speaks to many people on the phone and had no recollection of ever talking to Det. Figueroa.

After pulling on the door handle for approximately two minutes, Det. Figueroa took out his shield and tapped it on her window. When § 87(2)(b) saw the shield, she unlocked the door. Det. Figueroa opened § 87(2)(b)'s car door, stood in front of her blocking her exit, and asked for her car keys. § 87(2)(b) complied and began to look for her keys in her purse, which was still on the front passenger seat. Det. Figueroa became impatient and told § 87(2)(b) that she was taking too long. He then reached into the car, took the phone out of § 87(2)(b)'s hand, and grabbed her right wrist and the purse from the passenger seat. Det. Figueroa then pulled § 87(2)(b) forward out from her car and pushed her directly up against his car, so that her body was facing forwards against the back passenger seat of his car.

§ 87(2)(b) tried to brace herself against the car and push back, but Det. Figueroa continued to push § 87(2)(b) forward against the car, with his hands on her upper back and shoulders. Det. Figueroa then began to push § 87(2)(b) sideways towards the trunk of the car so that he could open the back door of his car. Once he had opened the back door, Det. Figueroa pushed § 87(2)(b) into the back seat and tried to close the door; however, § 87(2)(b)'s right foot was in the way and the door, which remained open, hit her foot with enough force to cause bruising. Det. Figueroa did not place § 87(2)(b) in handcuffs and did not state that she was under arrest.

At no point during this interaction did Det. Figueroa explain to § 87(2)(b) why he stopped her or why he removed her from her vehicle. Although he stated that he had spoken with her earlier, Det. Figueroa did not tell § 87(2)(b) the details of the conversation. § 87(2)(b) claimed in her CCRB statements that she remained completely ignorant about why she and § 87(2)(b) were placed in his car.

§ 87(2)(b) and § 87(2)(b) were then driven to the 67 Precinct stationhouse where they were kept in separate rooms until about 11 p.m. During her time at the precinct stationhouse, Det. Figueroa told § 87(2)(b) that § 87(2)(b) had been reported missing and that was the reason they were at the precinct stationhouse. Upon her release, Det. Figueroa told § 87(2)(b) that § 87(2)(b) had been returned to § 87(2)(b) and that she could make no efforts to see or contact § 87(2)(b). Det. Figueroa gave § 87(2)(b) no documents and did not ask that she sign anything while in the precinct stationhouse. After this incident, on § 87(2)(b), § 87(2)(b) went to § 87(2)(b) because of bruising to her shins and thighs.

In her first phone statement (BR 07), § 87(2)(b) said that § 87(2)(b)'s paternal grandmother, § 87(2)(b), had filed a complaint against her alleging that § 87(2)(b) had kidnapped § 87(2)(b) from § 87(2)(b) home and broken three locks in the process. In her in-person statement (BR 08), § 87(2)(b) stated that to her knowledge, there were no ongoing custody issues regarding § 87(2)(b) and that she has had primary sole custody of § 87(2)(b) since her birth and made no mention of any ongoing issues with § 87(2)(b). In a follow-up phone statement (BR 12), § 87(2)(b) stated that she was aware of the complaint filed by § 87(2)(b), but that she did not know any specific details of the complaint.

On October 27, 2016, § 87(2)(b) emailed to the CCRB a partial photograph of the custody paper which was given by her aunt, § 87(2)(b) to Det. Figueroa on October 8, 2016. § 87(2)(b) stated that the document proved that she has full custody of § 87(2)(b) (BR 16). The document indicates that a Family Court hearing regarding custody and visitation for § 87(2)(b) was scheduled for § 87(2)(b). No other information was visible.

§ 87(2)(b)'s medical records (BR 14) confirmed that she walked to the Emergency Room at § 87(2)(b) on § 87(2)(b) for an exam and documentation of the incident with police. § 87(2)(b)'s chief complaint was bruising to her right leg, which she stated was caused by "police pulling her out of her car" § 87(2)(b) days prior and being arrested for "trespassing." In her statement to doctors, § 87(2)(b) stated that § 87(2)(b)

§ 87(2)(b)'s father and his mother had filed a police complaint against her, alleging that four days prior, § 87(2)(b) had broken down the door to the grandmother's house and taken § 87(2)(b) of whom they have full custody.

§ 87(2)(b) denied calf, pain, joint swelling, leg pain, or neck pain but complained of back pain and joint pain in her right knee. Doctors noted a fading bruise on the middle of her right thigh. § 87(2)(b) was proscribed Ibuprofen 600 mg, to be taken three times a day.

§ 87(2)(b) (BR 10), who was returning to her apartment at § 87(2)(b) in Brooklyn, corroborated § 87(2)(b)'s statement, but stated that when she arrived both § 87(2)(b) and § 87(2)(b) were in the back seat of the unmarked car. § 87(2)(b) walked to the front passenger side of the unmarked car and asked Det. Figueroa why he had § 87(2)(b) in custody, but he did not answer her. § 87(2)(b) did not observe Det. Figueroa use any physical force against § 87(2)(b).

§ 87(2)(b) provided additional information about § 87(2)(b)'s custody and stated that § 87(2)(b) and § 87(2)(b)'s father had recently filed for full custody, but that the father had never been officially "established." A few days prior to the incident on October 8, 2016, § 87(2)(b) filed a complaint with police stating that § 87(2)(b) had broken into her home and taken § 87(2)(b) without permission. § 87(2)(b) denied that this occurred, but acknowledged that § 87(2)(b) was aware of the complaint.

§ 87(2)(b) (BR 11), § 87(2)(b)'s aunt, was inside the apartment that she shares with § 87(2)(b) and § 87(2)(b) at § 87(2)(b) in Brooklyn. She confirmed that she did not witness the initial stop, nor did she see Det. Figueroa put § 87(2)(b) or § 87(2)(b) into the back of the unmarked car. She did not observe Det. Figueroa use any physical force against § 87(2)(b) however she did state that § 87(2)(b) complained of pain to her legs when she was released from police custody at approximately 11 p.m.

§ 87(2)(b) also provided additional information regarding § 87(2)(b)'s custody and stated that § 87(2)(b) had gone to court on October 7, 2016, and obtained a petition for sole custody. Det. Figueroa reviewed the petition at the precinct stationhouse, and informed § 87(2)(b) that because it was only a petition, it did not establish full custody.

Det. Figueroa (BR 09) stated that on October 7, 2016, § 87(2)(b), § 87(2)(b), § 87(2)(b)'s father, and § 87(2)(b)'s sister, whose name he did not have, came to the 67 Precinct stationhouse to file a complaint against § 87(2)(b) for removing § 87(2)(b) from § 87(2)(b) custody (BR 13). § 87(2)(b) told Det. Figueroa that on October 6, 2016, she had been sleeping at her home, located at § 87(2)(b) in Brooklyn, when § 87(2)(b) appeared in her room. She assumed that § 87(2)(b) was there to spend time with § 87(2)(b) but when she got up a few minutes later, she saw that § 87(2)(b) and § 87(2)(b) were both gone. § 87(2)(b) further elaborated that due to financial and mental health issues beginning in September, 2015, § 87(2)(b) had trusted § 87(2)(b) to § 87(2)(b) care. In the weeks preceding the incident involving officers on October 8, 2016, § 87(2)(b) had expressed a desire to regain custody of § 87(2)(b). In

response to this, § 87(2)(b) filed a court petition for full custody and also received a court order stating that § 87(2)(b) was not permitted to leave New York State.

On October 7, 2016 at approximately midnight, § 87(2)(b) and § 87(2)(b) attempted to board a plane to Guyana with tickets purchased by § 87(2)(b)'s mother, who lives in Guyana. The tickets were originally for October 9, 2016, but § 87(2)(b) had changed them for an earlier departure. § 87(2)(b)'s sister had sent a copy of the court order prohibiting § 87(2)(b) from leaving the state with § 87(2)(b) to the Port Authority, so § 87(2)(b) was stopped at the gate before she was able to board the plane. Det. Figueroa was notified by the Port Authority of this that night.

Given the initial details of the complaint filed by § 87(2)(b) and the fact that § 87(2)(b) had attempted to leave New York State with § 87(2)(b), Det. Figueroa created a felony I-Card with probable cause to arrest for § 87(2)(b) and determined that § 87(2)(b) was a flight risk. He also created a wanted poster for § 87(2)(b) (BR 15).

On the morning of December 8, 2016, Det. Figueroa called § 87(2)(b) and explained that a complaint had been made against her and that she needed to come to the 67 Precinct stationhouse to discuss the custody issue. § 87(2)(b) agreed to come to the precinct stationhouse and told Det. Figueroa that she would be there later that day. Thinking that § 87(2)(b) would try to leave the state again with § 87(2)(b) before meeting at the precinct stationhouse, Det. Figueroa and his partner that day, Det. Braithwaite, went to JFK Airport to discuss the issue with the Port Authority and give the Port Authority official documentation regarding the travel ban.

When § 87(2)(b) did not arrive at the 67 Precinct stationhouse, Det. Figueroa decided to canvass the area in the vicinity of the intersection of § 87(2)(b) for § 87(2)(b)'s car, having been given the address by a family friend and the car's description and license plate number by § 87(2)(b). Det. Figueroa and Det. Braithwaite observed § 87(2)(b)'s car on the corner of § 87(2)(b). Det. Figueroa stated that the car appeared to be off with no occupants. He and Det. Braithwaite then circled the block and when they returned, Det. Figueroa observed that the lights in the car were on and § 87(2)(b) was in the driver's seat and § 87(2)(b) was in the back seat.

Det. Braithwaite drove the unmarked four door sedan adjacent to § 87(2)(b)'s car and Det. Figueroa, who had his shield out, approached the driver's side door of § 87(2)(b)'s car. Det. Figueroa tapped on the driver's side window with his shield and § 87(2)(b) immediately lowered her window. Det. Figueroa identified himself and asked § 87(2)(b) if she remembered talking to him earlier. § 87(2)(b) stated that she did recall speaking and acknowledged that she needed to go to the precinct stationhouse with § 87(2)(b). She then exited her car without any assistance and sat in the back seat of Det. Figueroa's car. § 87(2)(b) also exited § 87(2)(b)'s car and walked to Det. Figueroa's car without any assistance. Det. Figueroa denied that he or Det. Braithwaite pushed § 87(2)(b) up against his car and stated that throughout the entire encounter § 87(2)(b) was non-combative and cooperative.

Det. Braithwaite then drove Det. Figueroa, § 87(2)(b) and § 87(2)(b) to the 67 Precinct stationhouse, where they were put in a room together. Det. Figueroa and Det. Braithwaite spoke with them at length about the travel ban and the custody issues regarding § 87(2)(b). Det. Figueroa then conferred with agency attorney § 87(2)(b) and was informed that since § 87(2)(b) may not have been officially served papers regarding the travel ban, no crime of attempted custodial interference could be established. § 87(2)(b) further advised that since custody had not been legally established, § 87(2)(b) should be returned to her normal residence with § 87(2)(b) or, if § 87(2)(b) refused, with Child Protective Services until the Family Court date on § 87(2)(b). Det. Figueroa then informed § 87(2)(b) of her options and § 87(2)(b) chose that § 87(2)(b) be released to § 87(2)(b). Det. Figueroa estimated that they were talking for one to two hours. Because the case had already been referred to family court and no criminal charges were established, Det. Figueroa released § 87(2)(b) and did not create any official documentation to present to her because she already had the custody petition with the upcoming court date on it. Det. Figueroa documented this in his DD5s (BR 15).

During the course of the day on October 8, 2016, prior to stopping § 87(2)(b) at approximately 7 p.m., Det. Figueroa learned that it was possible, although he could not be sure until he spoke with her, that § 87(2)(b) had not officially been served the papers that would have informed her that she was not permitted to leave the state with § 87(2)(b) prior to attempting to board the plane at JFK Airport. This meant that the I-Card, although still active, no longer carried with it probable cause to arrest. Det. Figueroa left the I-Card active because it was still imperative that he speak with § 87(2)(b) about the criminal complaint, custody issues, and travel ban, but stated that if she were to be stopped by other officers, he would have been notified and would have let them know that they could not arrest her based on the active I-Card. At no point did Det. Figueroa consider § 87(2)(b) to be under arrest.

Det. Braithwaite confirmed Det. Figueroa's account but stated that when they initially saw § 87(2)(b) on October 8, 2016, she was getting into the driver's seat of her car and was not already seated inside of it. Det. Braithwaite exited the car and approached the front passenger side door of § 87(2)(b)'s car, but did not speak with her at any point. Det. Braithwaite stated that § 87(2)(b) remained calm and was compliant for the duration of the interaction. Det. Braithwaite denied that he or Det. Figueroa used any physical force against § 87(2)(b). Det. Braithwaite stated that when they were at the precinct stationhouse, he and Det. Figueroa spoke with § 87(2)(b) but stated that no formal interview was conducted. Det. Braithwaite at no point considered § 87(2)(b) to be under arrest.

According to People v. DeBour, 40 N.Y.2d 201 (1976), the police can stop a person if they have reasonable suspicion that a person did commit a crime, is about to commit a crime, or is committing a crime (BR 18).

People v. Hicks, 116 A.D.2d 150 (1986), states that in evaluating the reasonableness of the investigative detention, the court uses a dual approach and examines whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place (BR 19). According to People v.

Robinson, 282A.D.2d 75 (2001), a detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop (BR 20).

§ 87(2)(g)

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§ 87(2)(g)

Allegation C – Abuse of Authority: Detective Nelson Figueroa searched the vehicle in which

§ 87(2)(b)

was an occupant.

§ 87(2)(g)

After seating § 87(2)(b) (BR 08) in the back of his unmarked car, Det. Figueroa returned to § 87(2)(b)'s car, opened all the doors, turned on the lights, and looked around and underneath the front and back seats, lifting up the center console. At no point did Det. Figueroa ask for permission to search her car and § 87(2)(b) did not offer Det. Figueroa consent to search. Det. Figueroa then returned to the back passenger seat where § 87(2)(b) was seated and tried to remove her from the car, but was unable to do so because she was strapped in a car seat.

At this point, § 87(2)(b) drove up to the scene and parked in a haphazard manner, not fully in a parking spot, on the § 87(2)(b) because she saw § 87(2)(b) in the back seat of § 87(2)(b)'s car flailing her arms and heard her crying. She exited her car and yelled up to her aunt, § 87(2)(b) who was at the window of her apartment at § 87(2)(b), that officers had § 87(2)(b) in custody and that § 87(2)(b) should bring down custody papers for § 87(2)(b). Although § 87(2)(b) was looking out the window, she was not in a position to observe the incident between § 87(2)(b) and the officers.

§ 87(2)(b) asked Det. Figueroa to give § 87(2)(b) who was still in her car seat, to § 87(2)(b). Det. Figueroa refused and, having removed § 87(2)(b) from the car seat, picked her up and placed her in the back seat of his unmarked car with § 87(2)(b).

§ 87(2)(b) (BR10) stated that when she arrived at the corner of § 87(2)(b), she observed both § 87(2)(b) and § 87(2)(b) already in the back seat of the unmarked police car. § 87(2)(b) did not observe Det. Figueroa or Det. Braithwaite look anywhere in § 87(2)(b)'s car.

§ 87(2)(b) (BR 11) confirmed that she was in her apartment at § 87(2)(b) at this time and stated that she did not at any point see Det. Figueroa or Det. Braithwaite look anywhere in § 87(2)(b)'s car.

Det. Figueroa (BR 09) stated that once § 87(2)(b) and § 87(2)(b) were in his car he reached his arm through the open driver's side door of § 87(2)(b)'s car to remove the keys from the ignition. Det. Figueroa then shut the car doors and locked the car to secure it at the scene. He stated that neither he nor Det. Braithwaite looked in any parts of the car and that his only entry was to remove the keys from the ignition.

Det. Braithwaite stated that neither he nor Det. Figueroa removed anything from § 87(2)(b)'s car or looked anywhere inside of it. He further stated that he did not see Det. Figueroa remove § 87(2)(b)'s keys from the ignition of her car or enter the car in any way.

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§ 87(2)(g).

Allegation D – Abuse of Authority: Detective Nelson Figueroa searched § 87(2)(b) s purse.

§ 87(2)(g)

§ 87(2)(b) (BR 08) stated that after Det. Figueroa placed § 87(2)(b) in the back seat of the car with her, he took her purse, turned it upside down, and shook out the entire contents, which included her cell phone, a SIM card, coins, and various other unidentified items, onto the front passenger seat of his car, which she could easily see from where she was sitting. § 87(2)(b) stated that before Det. Figueroa emptied out her purse, her phone had been in good condition but that she saw the crack afterwards. In a follow-up phone statement (BR 12), § 87(2)(b) stated that she saw the phone being damaged, but she was not able to say what specifically caused the crack.

Det. Braithwaite asked Det. Figueroa what he was looking for and told him that he needed to put everything back in the purse, which Det. Figueroa did. § 87(2)(b) then asked that Det. Figueroa give her § 87(2)(b) s purse. Det. Figueroa did so, but then took the purse back to look for § 87(2)(b) s identification. Det. Braithwaite told Det. Figueroa that they did not need to get § 87(2)(b) s identification because they knew who she was. Det. Figueroa retrieved § 87(2)(b) s identification from the wallet in her purse and then gave the purse back to § 87(2)(b). § 87(2)(b) noted that in addition to the crack on her phone, her SIM card was not in her purse when it was returned to § 87(2)(b).

§ 87(2)(b) then came down from her apartment and approached Det. Figueroa, who was standing between his car and § 87(2)(b) s car with § 87(2)(b). § 87(2)(b) asked Det. Figueroa what was going on and gave him the custody papers regarding § 87(2)(b). Det. Figueroa responded that both § 87(2)(b) and § 87(2)(b) needed to come with him and Det. Braithwaite to the 67 Precinct stationhouse but did not say why.

§ 87(2)(g)

§ 87(2)(b) stated that when she arrived, she observed § 87(2)(b) and § 87(2)(b) in the back seat of an unmarked police car. As she approached, she saw Det. Figueroa standing up in front of the front passenger door of the unmarked car and dumping out the contents of § 87(2)(b) s purse by turning it upside down and shaking it. She stated that Det. Braithwaite was sitting in the driver's seat of the car while this occurred. Det. Figueroa then began putting § 87(2)(b) s belongings back into her purse and handed the purse to § 87(2)(b). At this point, § 87(2)(b) yelled up to § 87(2)(b) and requested that she come down with custody papers.

§ 87(2)(b) (BR 11) confirmed that she was not present when Det. Figueroa allegedly searched § 87(2)(b) s purse.

Det. Figueroa (BR 09) could not recall if § 87(2)(b) had a purse with her and stated that the only property that § 87(2)(b) had with her was some phones, possibly two to three, and her car keys, all of which she gave to her aunt. When shown a picture of § 87(2)(b) s purse, Det. Figueroa still could not recall seeing it at the scene. Det. Figueroa was not able to describe the condition of the phones and denied that he or Det. Braithwaite searched § 87(2)(b) s purse.

Det. Braithwaite (BR 17) said that while he was standing at the front passenger side of § 87(2)(b)'s car, he observed § 87(2)(b) dump out the contents of her purse inside her car. He could not recall if she was seated in the driver's seat and dumping the contents of her purse onto the front passenger seat, or standing outside of her car and dumping the contents of her purse into the front driver's seat. Det. Braithwaite noted that there were many items typical to a woman's purse but that he did not recall seeing a phone. Det. Braithwaite guessed that § 87(2)(b) was looking for her keys to give to her aunt.

According to People v. Reid, 2014 NY Slip Op 08759 (2014), the mere existence of probable cause to arrest an individual does not provide justification for an officer to frisk or search the individual unless the officer has actually placed or is in the process of placing the suspect under arrest (BR 21).

According to People v. Diaz, 107 A.D.3d 401 (2013), officers are not permitted to routinely search the bags of an individual unless they are under arrest. In order to conduct a lawful search, the individual must pose a threat of violence or there must be indications that the individual is armed or that the bag contains evidence. Furthermore, the bag must be in immediate possession of the individual.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
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| Squad Leader: | Title/Signature | Print | Date |
| Reviewer: | Title/Signature | Print | Date |